

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON JUDICIARY

Public Hearing on the
Appellate Division First Department
Departmental Disciplinary Committee,
the Grievance Committees of the
Various Judicial Districts, and the
New York State Commission on Judicial Conduct

Hearing Room 6
Empire State Plaza
Albany, NY

June 8, 2009
10:35 a.m.

PRESIDING:

Senator John Sampson
Chair
Senate Standing Committee on Judiciary

PRESENT:

Senator John A. DeFrancisco (R)
Senator Bill Perkins

	<u>LIST OF PARTICIPANTS</u>	<u>STATEMENT</u>
1		
2		
3	Martin R. Gold	
4	Alan W. Friedberg First Department DDC	9-34
5	Christine C. Anderson, Esq.	34-48
6	Kevin McKeown	48-63
7	Hon. Thomas A. Klonick	
8	Robert H. Tembeckjian Commission on Judicial Conduct	63-79
9	Justice Duane A. Hart	80-97
10	Pamela Carvel	98-109
11	Paul H. Altman	109-120
12	Luisa C. Esposito	120-128
13	William Galison	129-143
14	Eleanor Capogrosso, Esq.	143-158
15	Robert Ostertag NYS Bar Association	158-169
16	John A. Aretakis, Esq.	169-182
17	Michael Kelly	182-185
18	Kathryn Grace Jordan	
19	End Discrimination Now	185-191
20	James A. Montagnino, Esq.	192-203
21	Ruth M. Pollack, Esq.	204-216
22	Kevin Patrick Brady	217-219
23	Carl Lanzisera Americans for Legal Reform	219-225
24		

1 let's move on. Go ahead, Mr. Galison.

2 MR. GALISON: Okay. I'd like to
3 start by just touching on a point that
4 Senator DeFrancisco made, and I'm sorry he's
5 not here to respond or to hear this. It's
6 not a criticism, just a clarification.

7 He asked Ms. Anderson what the
8 percentage of cases were in which she felt
9 there was some impropriety or favoritism,
10 and he suggested that possibly the small
11 number, the small percentage, was indicative
12 that maybe something was -- if I understood
13 correctly, was that things were not so bad
14 and there might be an acceptable sort of
15 random level of impropriety or malfeasance.

16 The fact is that the vast majority of
17 cases provide no motivation for corruption.
18 By definition, corruption occurs when there
19 is a vested interest in the outcome. If a
20 policeman arrests 100 drug dealers and then
21 fails to arrest his younger brother, his
22 corruption rate is not 1 percent, it's a
23 hundred percent, because that's where he had
24 a motivation to be corrupt.

1 And nobody is accusing Mr. Tembeckjian
2 or Mr. Friedberg of doing this for sport;
3 they do it because they have a vested
4 interest. What exactly those vested
5 interests are is not known to us, but we can
6 only assume that they don't do it for sport.

7 Having said that --

8 CHAIRMAN SAMPSON: Now you have four
9 minutes. Go ahead.

10 MR. GALISON: Sir, thank you --
11 Senator. Give me a break.

12 Mr. Gold sets the rules of the
13 grievance committees -- I'm sorry, Mr. Gold
14 claims that the grievance committees are
15 governed by rules. The problem is not that
16 there are no rules, the problem is that the
17 rules are ignored, twisted and perverted.

18 The New York State judiciary is so
19 dysfunctional and corrupt that their
20 so-called ethics committees routinely break
21 existing laws and capriciously create false
22 laws, without due process and with utter
23 impunity. By doing so, they undermine the
24 credibility of the courts, which is clear to

1 everyone here.

2 Their corruption is so absolute and
3 flagrant that they don't even make an effort
4 at the appearance of propriety. Instead,
5 they spit in the face of citizens, the
6 Constitution, and the universal tenets of
7 justice. These committees use corruption
8 both as a sword against their enemies and a
9 shield to protect their friends. Complaints
10 against lawyers with connections are
11 brazenly whitewashed or ignored. I didn't
12 learn this from anybody else; this is from
13 my experience.

14 Decent lawyers are sanctioned or
15 disbarred with no legitimate reason, simply
16 because they dared to oppose the corrupt
17 power structure. Likewise, the Commission
18 on Judicial Conduct routinely whitewashes
19 and dismisses complaints against judges
20 without any investigation or explanation,
21 and judges who dare to challenge the system
22 are punished.

23 To compound the problem, no attorney
24 will touch cases of corruption against

1 crooked attorneys or judges because they
2 know this means professional suicide.

3 The corruption is not only deep and
4 wide, it extends to the highest office of
5 the judiciary. The Chief Judge of New York
6 State, Jonathan Lippman, who I respectfully
7 submit was shoehorned into office by a
8 faulty confirmation process, is personally
9 implicated in at least a dozen lawsuits and
10 dozens more complaints regarding corruption,
11 and those are only the ones that I know
12 about. This is the head of the snake. We
13 can talk about the tail or the middle, but
14 this is the head of the snake. And before
15 him, it was Judith Kaye.

16 In his prior role as presiding justice
17 of the First Appellate Division, Lippman
18 appointed Alan Friedberg to head the
19 Disciplinary Committee. Alan Friedberg, who
20 already earned his reputation as corrupt in
21 his former position as chief counsel to the
22 CJC.

23 When Friedberg continued to run the DDC
24 as corruptly as his disgraced predecessor,

1 Thomas Cahill, Lippman received scores of
2 complaints about Friedberg's corruption and
3 incompetence. Lippman did nothing.

4 And that is no surprise. In his
5 previous position as administrative judge of
6 the OCA, Jonathan Lippman had personally
7 fired DDC Investigating Attorney Christine
8 Anderson for reporting systemic felonious
9 corruption at the DDC. He fired her for
10 insubordination, but that's obviously a
11 mischaracterization.

12 No one can deny that DDC protects
13 guilty lawyers and attacks innocent ones.
14 But what I'd like to address is how they do
15 that, what are the methods that they use.
16 And I think people will relate to many of
17 these. I will be as brief as possible.

18 All problems with the DDC arise from
19 underlying conflicts. Mine had to do with
20 a -- I'm a musician, it had to do with a
21 record that I made and a lawyer tried to
22 steal the rights from the record by writing
23 and claiming that I was not the copyright
24 owner. Six months later, he changed his

1 mind and said that I was the copyright
2 owner, admitted that in a sworn document.
3 Now, in the interceding six months, I could
4 not get a record deal, and I was basically
5 being threatened with the federal crime of
6 copyright infringement. Turned my life
7 upside down.

8 Two streams of systemic and coordinated
9 official misconduct arose from my underlying
10 dispute. One, my efforts to file
11 disciplinary complaints against certain
12 lawyers have been illegally obstructed by
13 multiple government agencies, including the
14 DDC, the DA's office, the Attorney General,
15 and others --

16 CHAIRMAN SAMPSON: Stop. We have had
17 this dialog, and you talked about these
18 instances.

19 MR. GALISON: What would you like to
20 know?

21 CHAIRMAN SAMPSON: Exactly. I want
22 to get to -- you talk about whitewashing.
23 What specifically was done that you consider
24 to be whitewashing, those specific

1 incidents? And what recommendations would
2 you have to improve the system?

3 MR. GALISON: I appreciate your
4 editing, as always, Senator.

5 Well, I'll make it very clear, two
6 cases which are -- which I see as absolutely
7 crystal-clear. I mean, I'm not going to
8 talk about stuff that's debatable with
9 debatable facts.

10 For example, this lawyer, who wrote in
11 a letter to my record company that I was not
12 the owner of the record and that he was
13 going to sue me for copyright infringement,
14 six months later admitted in a sworn
15 affidavit that I was the copyright owner.
16 By any definition of the word, the man was
17 lying.

18 And lying is against the rules. It's
19 not against the law; I cannot sue him in
20 court for lying. Maybe for fraud, possibly,
21 but not for lying. Lying is an ethical
22 infraction that is in the LCPR. It has a
23 particular number, it's DR 1.102. A lawyer
24 or law firm shall not engage in conduct

1 involving dishonesty, fraud, deceit, or
2 misrepresentation.

3 Now, if you tell a record company that
4 I'm not the owner of the record and you know
5 perfectly well and six months later you say,
6 yes, I knew that he was the owner --

7 CHAIRMAN SAMPSON: We got that point.

8 MR. GALISON: Okay, I want to make
9 sure everybody understands there was no
10 question.

11 What did the DDC, what did Mr. Fried --

12 CHAIRMAN SAMPSON: What did the DDC
13 do that was so --

14 MR. GALISON: Okay, what Mr. Cahill
15 did was he asked for a response from the
16 lawyer. The response came from the lawyer's
17 employer and counsel at the time, Myron
18 Beldock. It should be noted that the --

19 CHAIRMAN SAMPSON: What did he do
20 that was questionable to you?

21 MR. GALISON: Okay, I'm sorry, yeah.
22 I was just going to note that Hal Lieberman,
23 who preceded Mr. Cahill, was working at
24 Beldock's office at that time. He went

1 directly from the DDC, which I think gives
2 some insight as to how the revolving door
3 works here.

4 CHAIRMAN SAMPSON: Your issue is that
5 that's a conflict issue that's --

6 MR. GALISON: That's a conflict
7 issue. But that's an aside, just to shed
8 some light on what's going on behind the
9 scene.

10 What happened, what Cahill did is he
11 got the response from the lawyer, but the
12 lawyer said: "Here's my response, it's 27
13 pages long, but Mr. Galison can't see it
14 because he's considering suing me, and it
15 may contain some information." By the way,
16 this is after months of delay --

17 CHAIRMAN SAMPSON: But don't they
18 send you a copy of his response --

19 MR. GALISON: Yeah, they were
20 supposed to. But instead, they sent me the
21 letter, which said the response is redacted
22 and sealed.

23 He said, We are attaching two versions
24 of the answer from Mr. Greenberg. One is

1 entirely deleted -- redacted. That is, page
2 3 to page 28 is redacted. The other is in a
3 sealed envelope which neither you, the DDC,
4 or Mr. Galison is allowed to view.

5 Now, the DDC booklet and the rules say
6 that when and after a case is opened -- and
7 by sending the thing, they've opened the
8 investigation -- the complainant is required
9 or encouraged to respond to the answer. And
10 I wrote to Mr. Cahill, and I said, Well, how
11 can I respond to something that's in a
12 sealed envelope that I can't even see?

13 CHAIRMAN SAMPSON: I mean, that's a
14 very valid point which you make. Let's go
15 to the second incident.

16 MR. GALISON: Let me just say that he
17 said "Do the best you can."

18 So in response, I wrote a 40-page
19 report, fully documented -- 40 pages of
20 text, hundreds of pages of exhibits --

21 CHAIRMAN SAMPSON: What actually
22 happened to the case? Was it dismissed?

23 MR. GALISON: It was dismissed. And
24 I wrote and I said when you dismissed this,

1 did you take into account the information
2 that was in the sealed envelope, or did you
3 just decide that I was lying?

4 And they said, Oh, well, maybe we made
5 a mistake, we'll have it reconsidered. It's
6 one of the things they do. They spend six
7 months reviewing a case, then they say, oh,
8 maybe we goofed, we'll reconsider it. Then
9 there's another six months or a year.

10 CHAIRMAN SAMPSON: I want you to kind
11 of get -- because I've got another minute
12 left, I want you to --

13 MR. GALISON: Please, just ask me the
14 questions, I will tell you. This is one
15 case.

16 The other case, there are five lawyers
17 and two judges. I haven't gone to the CJC
18 yet. The other case involved a judge -- I
19 mean a lawyer, a guy named -- which you've
20 heard this story before, a guy named
21 Friedman, Leon Friedman, who I complained to
22 Cahill, and Cahill said -- the very words he
23 wrote were "This attorney does not practice
24 in Manhattan or the Bronx and is therefore

1 not under our jurisdiction."

2 I wrote him, I said he does, he just
3 does. I'm not making that up. Here's his
4 letterhead, here's the picture of the plaque
5 over his door, here's a recording of his
6 secretary saying that's his sole law office.
7 But he was fraudulently registered in the
8 10th District. I said the fact that he's
9 fraudulently registered in the 10th District
10 doesn't have any bearing.

11 Three years -- actually, 3 1/2 years
12 now I have been contesting with Mr.
13 Friedberg and his committee that 148 East
14 78th Street is in Manhattan and not in
15 Suffolk County somewhere. They maintain
16 that it's in Suffolk County. And they --
17 because by no account does Mr. Friedman have
18 a law office in Suffolk County. He just
19 doesn't.

20 So that is just nonsense. I mean, you
21 know, that's the stuff that I'm -- but what
22 happened was they sent my complaint to the
23 10th District, where it was dismissed one
24 week after it was sent in April of 2006. It

1 was never sent to Mr. Friedman.

2 And what was the rationale behind not
3 investigating? They said this is not a
4 complaint about ethics, this is a civil
5 complaint. Well, hold on a second. The
6 entire complaint was enumerated in the
7 precise language of the LCPR, the Lawyer's
8 Code of Professional Responsibility. Every
9 complaint was followed by a numerically -- a
10 numbered description of the exact law and
11 why my cases corresponded to those
12 particular ethical rules. To say that it's
13 not an ethical complaint is just ludicrous.

14 But worse than that, they did not send
15 me any confirmation. I did not know for
16 three years. During the time of that three
17 years, I was communicating with Mr.
18 Friedberg, and he denied, he would refuse to
19 answer the simple question of whether Mr.
20 Friedman was practicing in the First
21 Department or the 10th District, the Second
22 Department. He -- I sent him 15 letters,
23 and I have a tape recording which I put on
24 YouTube of him saying that he will not tell

1 me, he refuses to tell me whether the lawyer
2 is in his jurisdiction. That is the level
3 of utter disregard for fairness and rules.

4 CHAIRMAN SAMPSON: And I need you to
5 -- we need to end it. And I think I
6 understand your point with the whole issue
7 of the transparency issue and just basically
8 the common decency and courtesy of just
9 following up --

10 MR. GALISON: No, no, no, not --
11 decency and courtesy is way more than I
12 would demand. I'm talking about legal
13 behavior. I don't care if he's decent or
14 courteous to me. He has to respond to my --
15 finally --

16 CHAIRMAN SAMPSON: The transparency
17 issue is what you --

18 MR. GALISON: Yes. Well, not just
19 transparency, following the laws. I've got
20 a list of the laws that Mr. Friedberg broke.

21 And I just want to say -- end with one
22 thing. I was recently speaking to the chief
23 clerk of the Second Appellate Division,
24 Mr. Pelzer. And I have him on a tape

1 recording saying the courts may dispense
2 with the rules, with their own rules.

3 That is not true. The senators can't
4 dispense with their own rules, the citizens
5 cannot dispense with their own rules, the
6 president cannot dispense with his own
7 rules.

8 Thank you, sir.

9 CHAIRMAN SAMPSON: Thank you very
10 much.

11 The next witness is Eleanor Capogrosso.
12 How are you doing? Please don't follow
13 Mr. Galison and take longer than five
14 minutes.

15 MS. CAPOGROSSO: I gave you a great
16 deal of material, Senator, so I'll try to
17 just hit right to the points.

18 CHAIRMAN SAMPSON: When you say hit
19 the points, that's what I want the witnesses
20 to do. Let's hit the points, the issues
21 that you have, and maybe any recommendations
22 that you may want to see.

23 MS. CAPOGROSSO: Certainly.

24 Perhaps I could answer a question that